

REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 2946
PORTLAND, OREGON 97208-2946

January 12, 2001

Operations Division
Regulatory Branch
Corps Nos.: 1996-00496 and 071-OYA-1-008760

Mr. Robert Hrdlicka
Marine Director, Port of Portland
P.O. Box 3529
Portland, Oregon 97209

Dear Mr. Hrdlicka:

The U.S. Army Corps of Engineers (Corps) has completed review of the Port of Portland's (Port) proposed dredging projects at Terminal 5, Berth 503 and Terminal 6, Berths 603 through 605. Dredging is scheduled to begin in early January 2001 under existing Department of the Army permits 1996-00496 (expires September 30, 2001) and 071-OYA-1-008760 (expires February 1, 2001). As a result of our review, the Port is authorized to proceed with the proposed dredging events.

Review of the proposed dredging projects included evaluation of sediment test results by the Regional Management Team (RMT) and evaluation of potential impacts on endangered species. Results of this evaluation are discussed in the enclosed Memorandum for the Record (Enclosure 1). In summary, the RMT has given approval for the dredging at both Terminal facilities to proceed based on extensive sediment testing and the design of the rehandle facility. With regard to endangered species, the National Marine Fisheries Service has concurred with the Corps' determination that the dredging activities may affect but are not likely to affect listed fish species. Based on sediment test results, the Corps determined that the dredging will have no effect on the bald eagle.

The Oregon Department of Environmental Quality has amended water quality certification for DA Permit 199600496 and has issued water quality certification for DA Permit 071-OYA-1-008760 (008760) to cover the return waters from the rehandle facility. Since DA Permit 008760 authorizes dredging only, the Corps has verified that the return waters associated with the disposal of dredged material from T-5 are authorized under the terms and limitations of Nationwide Permit (NWP) 16. Your activities under this NWP must be conducted in accordance with the General Conditions (Enclosure 2), and Water Quality Certification Conditions (Enclosure 3). Please also be aware that the terms and conditions of the above referenced DA Permits remain in full force and effect.

USEPA SF

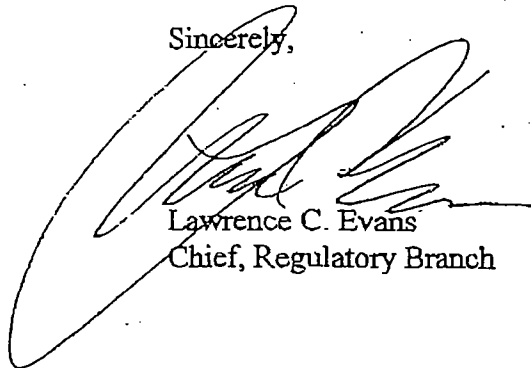


1286522

-2-

If you have any questions, please contact Ms. Judy Linton at the letterhead address or telephone (503) 808-4382.

Sincerely,



Lawrence C. Evans
Chief, Regulatory Branch

Enclosures

Copies Furnished:

Oregon Division of State Lands (Warner)

Oregon Department of Environmental Quality (Melville)

12 January 2001

CENWP-OP-G

199600496 and 071-OYA-1-008760

MEMORANDUM FOR RECORD

SUBJECT: 1) Discussion of Coordination Efforts Regarding Maintenance Dredging Activities Authorized by the Above-numbered Department of the Army Permits, and 2) Verification under Nationwide Permit 16 for Return Waters from Upland Contained Disposal Areas.

1. Applicant: Port of Portland (Port)

2. Location, Project Description, Existing Conditions, and Need for the Activity:

a. **Location:** Terminal 6 (Berths 603 through 605), 7201 N. Marine Drive, Columbia River mile 102.5 and Terminal 5 (Berth 503), Willamette River mile 1. Both sites are located within Portland, Multnomah County, Oregon.

b. **Project Description:** The Port is proposing to conduct maintenance dredging of the Terminal 5 and 6 facilities as authorized by their existing Department of the Army (DA) Permits. DA Permit 199600496 authorizes the removal of sediments from T-6 to a depth of -40 feet National Geodetic Vertical Datum (NGVD) with disposal in-water at Morgan Bar, within the Ross Island Lagoon, or at an approved upland disposal site. This permit will expire September 30, 2001. The Port proposes to dredge in January 2001. DA Permit 071-OYA01-008760 (008760) authorizes maintenance dredging of several Port Terminal facilities on the Willamette River, including Terminal 5. Disposal of sediments was authorized to occur in-water at Morgan Bar by DA Permit 199500783; this permit expired November 30, 2000.

On September 26, 2000, the Port submitted an application for the reauthorization of a five-year maintenance dredging permit for the T-6 facility (IID No. 200000950). As part of the application package, the Port included sediment test results from 1997/1998 sampling. Test results from sampling done in September 2000 was provided in November 2000. DA Permit 199600496 required sediment testing be provided to the Corps for review prior to any proposed in-water disposal. Coordination requirements for the five-year reauthorization under permit application 200000950 could not be completed before the proposed January 2001 dredge period, therefore, the existing DA Permit is being used.

CENWP-OP-G 199600496 and 071-OYA-1-008760 (JL)

SUBJECT: 1) Discussion of Coordination Efforts Regarding Maintenance Dredging Activities Authorized by the Above-Numbered Department of the Army Permits, and 2) Verification Under Nationwide Permit 16 for Return Waters from Upland Contained Disposal Areas.

Concurrent with the submittal of permit application 200000950, the Port indicated that maintenance dredging was also proposed for T-5. Sediment testing was also completed at this facility.

Disposal for both the T-5 and T-6 maintenance dredging is proposed to occur upland at a rehandle facility located at Suttle Road near T-6. Dredging at both facilities will occur by clamshell dredge and sediments will be barged to the rehandle facility. Water will be reintroduced into the barge so that the dredged material can be pumped to the upland site. Return flows will reenter the Columbia River following adequate settling time. Material can then be used as fill for construction projects or taken to a land fill as cover material depending on the nature of the sediments.

Coordination of the maintenance dredging activities under these existing permits was required to 1) determine whether contaminants are present in the sediments to be removed, 2) ensure compliance with the Endangered Species Act, and 3) authorize the discharge of dredged material (i.e. return waters from an upland contained disposal site) into waters of the United States.

c. **Existing Conditions:** Existing conditions at the Terminal 5 and 6 facilities are described in the Decision Documents prepared for the respective DA Permits. Dredged material was initially placed at the Suttle Road site in 1971 and again between November 1975 and February 1976. Some vegetation may be present along the banks of the Columbia River/Oregon Slough, but not in the area of the rehandle facility.

3. **Authority:** Section 10 of the Rivers and Harbors Act, and Section 404 of the Clean Water Act. Because DA Permit 008760 authorizes only maintenance dredging under Section 10, the return flows from the upland site are proposed to be authorized by Nationwide Permit 16 (Return Water from Upland Contained Disposal Areas). DA Permit 199600496 was issued under both Section 10 and 404 authorities with an issued water quality certification.

4. **Other Federal, State, and Local Authorizations Obtained or Required and Pending:** The Oregon Department of Environmental Quality amended the Water Quality Certification issued for DA Permit 199600496 to address return flows from the Suttle Road disposal site. Certification was also issued to cover return flows from the Suttle Road site resulting from the disposal of dredged material from the T-5 facility.

5. **Project Purpose:** Maintenance dredging to depths authorized by existing DA Permits.

CENWP-OP-G 199600496 and 071-OYA-1-008760 (JL)

SUBJECT: 1) Discussion of Coordination Efforts Regarding Maintenance Dredging Activities Authorized by the Above-Numbered Department of the Army Permits, and 2) Verification Under Nationwide Permit 16 for Return Waters from Upland Contained Disposal Areas.

6. Coordination:

a. **Sediment Test Results:** Sediment, elutriate, and leachate quality of the material to be dredged was evaluated by Hart Crowser according to the *Dredged Material Evaluation Framework, Lower Columbia River Management Area*, November 1998. Sampling at both T-5 and T-6 occurred between 1997 and 2000. Test results were coordinated with the Regional Management Team (RMT), which consists of representatives from the Environmental Protection Agency, Oregon Department of Environmental Quality, and U.S. Army Corps of Engineers (Corps). Detected compounds within the sediments at T-5 were all below corresponding screening levels. At T-6, there was low-level exceedence of the screening levels for total DDT and TBT. The RMT requested that the Port evaluate the sediments below the dredge prism to determine what would be exposed to the environment following the removal of sediments. This evaluation was completed in November 2000 and showed that exposed material will be clean with all compounds below screening levels.

The RMT met with the Port on December 21, 2000, to discuss the proposed January 2001 dredging event. Based on all of the sediment evaluation that has occurred at T-5 and T-6, and the design of the rehandle facility, the RMT gave approval for the dredging to proceed.

b. **Threatened and Endangered Species:** Listed fish species occurring within the project areas include Snake River salmon species, Columbia River steelhead and chinook, Willamette River steelhead and chinook, and Columbia River chum. These species are covered by the National Marine Fisheries Service (NMFS). The SW Washington/Columbia River coastal cutthroat trout are proposed for listing and are handled by the U.S. Fish and Wildlife Service (USFWS). Bald eagles are also known to occur in the general vicinity of the two Terminal facilities.

Consultation was initiated with NMFS on November 15, 2000. The Corps determined that the proposed dredging at both terminal facilities may affect, but is not likely to adversely affect listed fish species. As part of the consultation process, NMFS was provided all information regarding the sediment evaluation development of the rehandle facility. NMFS concurred with the Corps' determination by letter dated January 9, 2001. This concurrence covers both the January 2001 dredge event to occur under DA Permits 199600496 and 008760, and the proposed five year reauthorization of maintenance dredging at Terminal 6 under Permit Application 200000950.

CENWP-OP-G 199600496 and 071-OYA-1-008760 (JL)

SUBJECT: 1) Discussion of Coordination Efforts Regarding Maintenance Dredging Activities Authorized by the Above-Numbered Department of the Army Permits, and 2) Verification Under Nationwide Permit 16 for Return Waters from Upland Contained Disposal Areas.

With regard to the proposed coastal cutthroat trout, the Corps determined that the proposed dredging activities would not jeopardize the continued existence of these species. Therefore, conferencing with the USFWS was not initiated.

The bald eagle is known to occur in the general area of T-5 and T-6. A nest site is thought to occur in the Vancouver Lake lowland area on the Washington State side of the Columbia River. Other nest sites may also occur on the Oregon side downstream of the Terminal 5 and 6 facilities. Bald eagles are seen in the Sauvie Island area and travel to and from the Vancouver Lake lowlands in their daily search for prey. USFWS expressed concerns with presence of some contaminants at T-6 and the possibility that these contaminants could impact the eagles. Further testing, however, indicated that all contaminants will be removed with the dredging and that the exposed sediments are clean. The Corps has, therefore, determined that the January 2001 dredging event at Terminals 5 and 6 will have no effect on the bald eagle. Consultation with the USFWS will occur on the bald eagle for the five-year maintenance dredging reauthorization under 200000950.

c. **Wetlands:** A wetland delineation review of the area proposed for the rehandle facility identified two wetlands to the west of the disposal site. An initial delineation was conducted in August 1999 with a subsequent site visit in October 2000. The disposal site has been designed so that the berms at the western end will be 25 feet from the identified wetlands.

d. **Public Interest Review Factors:** The following factors were considered and it was determined that maintenance dredging under the existing permits should not adversely affect conservation, aesthetics, general environmental concerns, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, or consideration of property ownership in the area.

The proposed project is not located in the coastal zone, is not located on a designated wild or scenic waterway, and does not impact any known cultural resource sites.

7. Determinations:

a. **Finding of No Significant Impact (FONSI).** Having reviewed the information provided by the permittee and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be required.

CENWP-OP-G 199600496 and 071-OYA-1-008760 (JL)

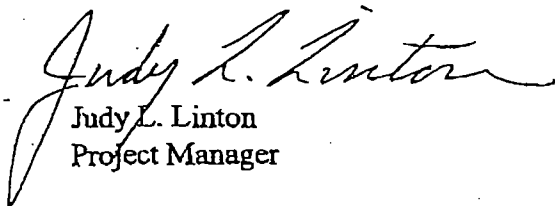
SUBJECT: 1) Discussion of Coordination Efforts Regarding Maintenance Dredging Activities Authorized by the Above-Numbered Department of the Army Permits, and 2) Verification Under Nationwide Permit 16 for Return Waters from Upland Contained Disposal Areas.

b. Compliance with 404(b)(1) guidelines. Having completed the evaluation as described in this memorandum, I have determined that the return waters from the contained upland disposal site at the Suttle Road rehandle facility will result in no more than minimal impacts to the environment, is not contrary to the public interest, and complies with the 404(b)(1) guidelines.

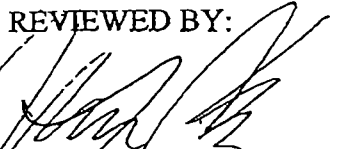
c. Public Interest Determination: I find that use of the existing Department of the Army permits to allow maintenance dredging at Terminals 5 and 6, and the verification that return flows from the Suttle Road disposal site qualify for Nationwide Permit 16, is not contrary to the public interest.

d. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit Action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

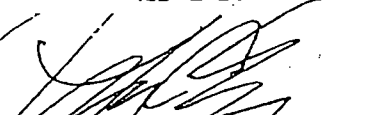
PREPARED BY:


Judy L. Linton
Project Manager

REVIEWED BY:


Lawrence C. Evans
Chief, Regulatory Branch

APPROVED BY:


Randall J. Butler
Colonel, Corps of Engineers
Commanding



Oregon

John A. Kitzhaber, M.D., Governor

January 12, 2001

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TTY (503) 229-6993

Judy Linton
U.S. Army Corps of Engineers
ATTN: Operations Division
P.O. Box 2946
Portland, OR 97208-2946

Dear Ms. Linton:

The Department of Environmental Quality (DEQ) has reviewed Corps of Engineers permit application for the Port of Portland, # 2000-950 (DSL RP-7391), which is a modification and renewal of an existing 5-year permit ID# 1996-00496. The applicant proposes to conduct maintenance dredging at three berthing areas at Marine Terminal 6 (Berths 603-605) to remove sediments that have accumulated above navigational depths. Sediments are proposed to be removed to a depth of -40 feet NGVD plus 2 feet of overdredge. Terminal 6 is located on the Oregon Slough along the south bank of the Columbia River at River Mile (RM) 102. Terminal 6 is the Port's primary container facility.

The Port also proposes to remove sediments from one berthing area at Marine Terminal 5 (Berth 503). Terminal 5 is located on the east bank of the Willamette River at RM 1.0 and is used primarily to handle potash and other dry bulk material. This action is authorized under an existing Army Corps of Engineers (ACOE) Section 10 Rivers and Harbors Act Permit # 071-OYA-1-008760 (DSL 2080). The Corps plans to issue a Nationwide Permit # 16 to cover the return water from the operation. This Section 401 Water Quality Certificate is intended to authorize both dredging activities, i.e. the USACE Section 404 permit, ID# 2000-950; and, the USACE Nationwide Permit 16 attached to USACE permit # 071-OYA-1-008760. All conditions in this Section 401 Water Quality Certificate apply to all three permits including the Suttle Road Dredge Rehandle Pilot Project portion.

The Port is proposing to transport all sediments, after removal, to a pilot sediment rehandling facility called the Suttle Road Dredge Rehandling Facility. It is located east and upstream of Terminal 6, along the left bank of the Columbia River at RM 104. The facility is comprised of a primary containment cell of approximately 4 acres, bermed to 6 feet creating a pond with a capacity of about 30,000 cubic yards. A weir will discharge water and suspended solids to a second cell approximately one acre in size where additional settling will take place. The applicants state that water from this cell may be recirculated to the dredge materials pumping system, but eventually will be discharged to the Columbia River after adequate settling and elutriate testing.

Characterization and contaminant testing of sediments proposed for removal has been conducted to determine the quality of the bulk dredged material, as well as the quality of the return water. Only DDT exceeded the Screening Levels (SL's) contained in the Dredged Material Evaluation Framework (DMEF) for determining suitability of sediments

DEQ-1

Judy Linton
Page 2

for disposal. The exceedances were slight and inconsistent across sites and therefore the sediments were determined to be within the parameters of suitability for in-water disposal.

The Corps initiated informal consultation under the Endangered Species Act (ESA), and the Magnuson-Stevens Act with the National Marine Fisheries Service (NMFS) via a letter dated November 15, 2000. The Corps determined that the activities described in the applications were "not likely to adversely affect" listed species in Columbia or Willamette Rivers. The NMFS concurred with the Corps determination in a letter dated January 9, 2001.

Based on information provided by the applicant, DEQ does not anticipate any long-term violations of the Clean Water Act and State Water Quality standards, particularly 340-41-026 (1)(a), Antidegradation Policy for Surface Waters, provided the conditions which follow are incorporated into the permit.

The Columbia River is classified as Water Quality Limited under Section 303(d) of the Federal Clean Water Act for the parameters of water contact recreation (fall through spring), dissolved oxygen (summer), pH (spring), temperature (summer), total dissolved gas (annual), and toxics.

This reach of the Columbia River supports salmonid rearing and migration.

The Willamette River is classified as Water Quality Limited under Section 303(d) of the Federal Clean Water Act for the following parameters: Bacteria [Fecal coliform(Fall/Winter/Spring)]; Toxics: [Tissue-Mercury (Year Round)]; Temperature (Summer); and Biological Criteria (Fish Skeletal Deformities).

The Willamette River supports salmonid spawning, rearing and migration.

marked 1) Fish protection/ODFW timing :

- a) All in-water work shall occur within the Oregon Department of Fish and Wildlife's (ODFW) preferred time window, as specified in: *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2000.*
- b) Provide for fish habitat; no obstruction or impediments to fish passage is to occur. No changes to stream gradient or negative impacts are to occur to the fishery.

CHLOS 2) **Turbidity/erosion controls:** The authorized work, during dredging or disposal, shall not cause turbidity in the Columbia or Willamette Rivers to exceed 10% above the natural turbidity 100 feet downstream from the discharge point. Turbidity shall be monitored during in-water work. Monitoring points shall be 100 feet upstream (representative background), 100 feet downstream, and at the discharge point. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 100 feet below the discharge point is considered to be an exceedance of the standard. For

Judy Linton
Page 3

CHILDS TO CALL

Information on turbidity monitoring, contact Larry Caton at the DEQ laboratory at 503-229-5983. The turbidity standard can be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented as applicable, including, but not limited to:

CHILDS

a) Adequate settling time in the settling basin. Studies by the applicant have shown that a minimum of 4 days, and optimally 7 days is necessary for adequate settling of suspended solids.

FRANK
Inspect
Boat Ramp

b) Use filter bags, sediment fences, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of spoils. These measures shall be inspected and maintained daily to ensure their proper function.

Turbidity shall be measured (or visually assessed) and recorded at a minimum, every two hours, during periods of active construction. The designated person attending the monitoring equipment shall be responsible for notifying the project foreman of any exceedance of the turbidity standard. If a 10 % exceedance of the background level occurs at 100 feet below the project site, modify the activity causing the problem and continue to monitor every two hours. If exceedances occur with two consecutive measurements (two hours apart) stop the activity causing the turbidity until the problem is resolved.

The Suttle Road Dredge Rehandle Facility shall be large enough to accommodate the quantity of material and water to be placed there in order to allow adequate settling. Return water turbidity from the rehandle site shall not exceed 10% above the background level in the Columbia River. The weirs in the settling basins shall be maintained at a height that allows no more than three inches of overflow water from the cell.

CHILDS

3) A Sampling and Analysis Plan for Dredged Material Characterization was prepared for the Port of Portland by Hart Crowser and submitted on September 22, 2000. The SAP is intended to evaluate the management of dredged material at Suttle Road or a similar site. The plan is accepted and will form the framework for the assessment of water quality resulting from dredging activities described above. Deviations from the plan shall be reviewed and approved by the DEQ. Under no circumstance may process water from the rehandle facility be discharged to the Columbia River before Modified Elutriate testing is performed and the results approved by DEQ. The dredged materials and return waters shall be adequately tested for all parameters for which the Columbia River is listed under federal Clean Water Act, Section 303(d).

FRANK

4) If a bucket dredge of any type, including but not limited to grab or clamshell, dipper, dragline, or backhoe bucket, is used, all digging passes of the bucket shall be completed without any material, once in the bucket, being returned to the wetted area. No dumping of partial or full buckets of material back into the project area will be allowed. No dredging of holes or sumps below maximum depth and subsequent redistribution of sediment by dredging or other means will be allowed.

Judy Linton
Page 4

- Handwritten notes:*
5) *Handwritten: (41005)*
6) *Handwritten: project*
7) *Handwritten: project*
8) *Handwritten: project*
9) *Handwritten: project*
10) *Handwritten: Degens*
11) *Handwritten: project*
12) *Handwritten: project*
13) *Handwritten: project*
14) *Handwritten: Degens*
- 5) If the dredging operation causes a water quality problem which results in distressed or dying fish, the operator shall immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ and the Oregon Department of Fish and Wildlife (ODFW).
 - 6) Petroleum products, chemicals, or other deleterious waste materials shall not be allowed to enter waters of the State.
 - 7) Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained in order to prevent spills into State waters.
 - 8) In the event of a discharge of oil, fuel, or other chemicals into State waters, or onto land with a potential to enter State waters, containment and cleanup shall begin immediately and be completed as soon as possible.
 - 9) Spills into State waters, or onto land with a potential to enter State waters, shall be reported immediately to the DEQ Spill Response Team [Northwest Region/Portland: (503) 229-5614].
 - 10) This water quality certification (WQC) shall remain in effect for five years from the issuance date. DEQ reserves the option to modify, amend or revoke this WQC, as necessary, in the event new information indicates that the dredging/disposal activities are having a significant adverse impact on State water quality or critical fish resources.
 - 11) A copy of this WQC letter shall be kept on the job site and readily available for reference by the Corps of Engineers, DEQ personnel, the contractor, and other appropriate state and local government inspectors.
 - 12) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the Public Notice for certification.
 - 13) DEQ requires site access on day of request.
 - 14) If you are dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director of DEQ within 20 days of the mailing of this certification. You may also request written information about alternative dispute resolution services under Oregon Revised Statute 183.502, including mediation or any other collaborative problem-solving process.

The DEQ hereby certifies that this project complies with the Clean Water Act and state water quality standards, if the above conditions are made a part of the Federal permit.

01/12/01 18:03 FAX 503 944 7
01/12/01 16:47 FAX 5032295402

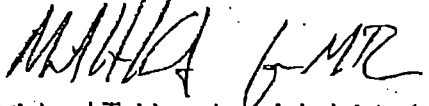
Port of Ptld-MarinesPtJ T-6 Admin.
DEQ WQ 7

013
006/006

Judy Linton
Page 5

The applicant shall notify the DEQ of any change in the ownership, scope, or construction methods of the project subsequent to certification. If you have any questions, please contact Tom Melville at 503-229-5845.

Sincerely,



Michael T. Llewelyn, Administrator
Water Quality Division

T:TM.Certlnt.00-00950

cc: Applicant
Lori Warner, DSL
Ben Meyer, NMFS
Kathi Larsen, Jeremy Buck, USFWS
Jennifer Sutter, NWR

Nationwide Permit General Conditions

(From the March 9, 2000 Federal Register, Vol. 65 No 47)

1. Navigation
2. Proper Maintenance
3. Soil Erosion and Sediment Controls
4. Aquatic Life Movements
5. Equipment
6. Regional and Case-by-Case Conditions
7. Wild and Scenic Rivers
8. Tribal Rights
9. Water Quality
10. Coastal Zone Management
11. Endangered Species
12. Historic Properties
13. Notification
14. Compliance Certification
15. Use of Multiple Nationwide Permits.
16. Water Supply Intakes
17. Shellfish Beds
18. Suitable Material
19. Mitigation
20. Spawning Areas
21. Management of Water Flows
22. Adverse Effects from Impoundments
23. Waterfowl Breeding Areas
24. Removal of Temporary Fills
25. Designated Critical Resource Waters
26. Fills Within the 100-year Floodplain

C. Nationwide Permit General Conditions:

The following general conditions must be followed in order for any authorization by an NWP to be valid:

- Degens*
- Degens*
- mailed*
- pad*
- mailed*
- mailed*
- pad*
- Degens*
- CHILD*
- my 1st NWP 16*
- MA*
- pad*
1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
 2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
 3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
 4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
 5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
 6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.
 7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
 8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
 9. Water Quality. (a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).
(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.
 10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).
 11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the

Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWP.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at

<http://www.fws.gov/r9endspp/endspp.html> and

http://www.nmfs.gov/prot_res/esahome.html, respectively.

Peggy
12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

Marcel
13. Notification.

(a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

- (1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or
- (2) If notified in writing by the District or Division Engineer that an individual permit is required; or
- (3) has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

- (1) Name, address, and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWP 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring $\frac{1}{4}$ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than $\frac{1}{4}$ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership

(including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWP 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWP's 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements. (c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2 acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer

will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. (f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4 acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

Degens - 14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

Degens - 15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3 acre.

Marcel - 16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

Paul - 17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

Marcel - 18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

Degens - 19. Mitigation. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.

(b) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed; (c) The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required.

Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the

project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than 1/3 of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWP's (e.g., for NWP 39, 1/4 acre of wetlands cannot be created to change a 1/2 acre loss of wetlands to a 1/4 acre loss; however, 1/2 acre of created wetlands can be used to reduce the impacts of a 1/3 acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(d) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

pad - 20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

March - 21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

March - 22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

pad - 23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

March - 24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

pad - 25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

NWPs
general
(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWP in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWP only after he determines that the impacts to the critical resource waters will be no more than minimal.

Mud
26. Fills Within 100-Year Floodplains. For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges Below Headwaters. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (i.e., below headwaters) are not authorized by NWP 29, 39, 40, 42, 43, and 44. For NWP 12 and 14, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) Discharges in Headwaters (i.e., above the point on a stream where the average annual flow is five cubic feet per second).

(1) Flood Fringe. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWP 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) Floodway. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWP 29, 39, 40, 42, 43, and 44. For NWP 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.